

Appl. No. 10/637,202  
Response Dated February 6, 2006  
Reply to Office Action of October 5, 2005

### **REMARKS**

#### **Summary**

The applicant respectfully requests reconsideration of the present U.S. Patent application as amended herein. Claims 1-49 stand in this application. The applicant has amended claims 1, 21, 39, 42, and 46. The applicant respectfully requests that the Examiner favorably reconsider and allow the standing claims.

#### **Allowable Subject Matter**

The applicant herein acknowledges that the Examiner has allowed claims 32-38.

#### **Objection to the Specification**

The Examiner objected to the abstract as being of improper length. The applicant has submitted a replacement abstract herewith. The replacement abstract is in the range of 50-150 words. Accordingly, the applicant requests that the Examiner withdraw the specification objection with respect to the abstract.

The Examiner further objected to the specification for failing to include a summary of the invention. The applicant notes that 37 C.F.R. §1.73 recites that "[a] brief summary of the invention indicating its nature and substance, which may include a statement of the object of the invention, should precede the detailed description." The applicant asserts that the rule's use of "should" is permissive rather than mandatory. Accordingly, the applicant respectfully asserts that the omission of a summary does not render the specification improper.

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### 35 U.S.C. §112

The Examiner rejected Claims 27-30 under 35 U.S.C. §112 for not particularly pointing out and distinctly claiming the subject matter that the applicant regards as his invention. The applicant respectfully traverses the rejection based on the amendment to independent claim 21. The applicant has amended independent claim 21 in accordance with the Office Action and respectfully requests removal of this rejection.

### 35 U.S.C. § 102(b)

At page 3, paragraph 6 of the Office Action claims 1-4, 11-13, 21-22, 29-31, 39-46, and 48 stand rejected under 35 U.S.C. §102(b) as being anticipated by United States Patent Number (USPN) 4,156,302 to Van Niel (hereinafter Niel). The applicant respectfully traverses the rejection, and requests that the Examiner reconsider and withdraw the anticipation rejection.

To establish a *prima facie* case of anticipation under 35 U.S.C. §102, the Examiner must supply a single prior art document that alone teaches "... every aspect of the claimed invention either explicitly or impliedly." (emphasis added) (See M.P.E.P. §706.02). If the Examiner cannot show that the single prior art document asserts each and every element and limitation of the applicant's claims, then the Examiner has failed to establish a *prima facie* case of anticipation for that claim. To overcome the Examiner's anticipation rejection, the applicant must only demonstrate that the cited prior art document fails to teach one element or limitation present in the claim.

Currently amended independent claim 1 recites in a salient portion:

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. . . said driver rod to penetrate said outer wall at approximately a 45 degree angle relative to said outer wall to detach said security tag from said item . . .  
(emphasis added)

The Examiner alleges that Niel column 4, lines 40-60 disclose a driver rod penetrating the outer wall (at 43) to detach the tag from the item. The applicant asserts, however, that Niel Figure 1 and column 5 lines 55-57 disclose that the jaws are “. . . selectively movable along a plane generally parallel to the general plane of the case 16.” (emphasis added). The applicant asserts that the Niel does not disclose the driver rod to penetrate said outer wall at approximately a 45 degree angle relative to said outer wall as recited by currently amended independent claim 1. Accordingly, the applicant affirms that currently amended independent claim 1 is patentable as it recites at least an element not taught by Niel. Further, claims 2-20 are patentable as each depends from a patentable independent claim.

Currently amended independent claims 21, 39, 42, and 46 recite features similar to those recited in currently amended claim 1. Therefore, for reasons analogous to those presented with respect to currently amended independent claim 1, the applicant respectfully submits that claims 21, 39, 42, and 46, and all claims directly or indirectly depending therefrom, are not anticipated by and are patentable over Niel. Accordingly, the applicant respectfully requests that the Examiner remove the anticipation rejection with respect these claims.

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**35 U.S.C. § 103(a)**

At page 5 paragraph 8 claims 5-10, 23-28 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Niel. At page 6 paragraph 9 claims 47 and 49 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Niel in view of USPN 6,096,153 to Nowaczyk. For at least the reasons offered with respect to the Examiner's §102 rejection, the applicant affirms that dependent claims 5-10, 23-28, 47, and 49 are patentable as each depends from a patentable independent claim.

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### CONCLUSION

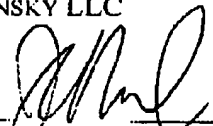
For at least the foregoing reasons, the applicant submit that he has overcome the Examiner's rejections and that he has the right to claim the invention as set forth in the listed claims. The Examiner is invited to contact the undersigned at 360-696-8602 to discuss any matter concerning this application.

The applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, the applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

The applicant believes that claims 1-49 are in allowable form. Accordingly, the applicant earnestly solicits a timely Notice of Allowance to this effect.

Respectfully submitted,

KACVINSKY LLC



Jon C. Reali  
Reg. No. 54,391  
Under 37 C.F.R. §1.34(a)

4500 Brooktree Road, Suite 102  
Wexford, PA 15090  
(724) 933-5529

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